



# THE ATTORNEY GENERAL OF TEXAS

GERALD C. MANN

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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable T. M. Trimble  
First Assistant State Superintendent  
Austin, Texas

Dear Sir:

Opinion No. 0-1075

Re: What is meant by the phrase, "purchasing  
school and gymnasium equipment?"

This will acknowledge receipt of your letter of June 30, 1939, which  
letter is as follows:

"The Cee Vee Rural High School Consolidated District voted a  
bond issue of \$5,000 for the purpose of constructing permanent  
repairs to school buildings and purchasing school and gymnasium  
equipment within the limits of the said district.

"At the request of Miss Beatrix Cobb, County Superintendent  
of Cottle County, we would like for you to define what is meant  
by the phrase, "purchasing school and gymnasium equipment."

In reply to the above request, this is to advise that we have made  
an independent investigation of the bond issue in question and find  
from the transcript that the bonds were issued:

"For the purpose of constructing permanent repairs to school  
building and purchasing school and gymnasium equipment, within  
the limits of said district "

We further learned from the investigation made that the permanent repairs  
of the buildings have already been made, and we come now to consider what  
may be purchased with those funds now on hand from the bond issue as  
covering "purchasing school and gymnasium equipment."

In our research we do not find that the courts of the State of Texas have  
ever passed upon the question of what constitutes school "equipment," and  
the nearest case with respect thereto as passed upon by the courts of  
Texas is the case of McGee vs. Franklin Publishing Company, 39 S. W. 335,  
and in the case the question of the term "furniture" was defined, and the  
court had this to say:

"The term 'furniture' used in the statutes was evidently  
intended to embrace only such articles as were generally  
understood to be in general use in school houses as a part  
of the furniture of the house as distinguished from appliances

We, however, feel that "purchasing school and gymnasium equipment," as is set out in the case now under discussion is broader than the term "Furniture" and could be used in a broader sense than appliances or apparatus as used in the case just above quoted.

Being without a Texas case in point as we found it to be, search was made elsewhere, and we come now to the various definitions of equipment as have been used by the courts of other states:

"Equipment of an institution means the visible, tangible furniture, fixtures and apparatus on the premises which are usual and necessary for the operation therein conducted."  
Baltimore v. St. Peters Academy, 50 Md. 321.

"Equipment in a hospital means everything required to convert an empty building into a hospital." Bouviers Law Dict., Volume 1, p. 1055.

In quoting from the Supreme Court of Indiana, the Waco Court of Civil Appeals has this to say with reference to equipment of an automobile:

"The term 'equipment' within a policy insuring against loss on the body, machinery, and equipment of an electric automobile means whatever is needed for efficient action or service in connection therewith, and therefore included a rectifier which was kept in the garage and used for the purpose of charging the electric automobile with electricity, it being necessary to operation of such automobile that it should be charged with electricity at stated times." Irwin v. Auto Finance, 40 S. W. (2d) 871.

We believe that the language of the court in taking of a similar matter covered the question now to be passed upon, and we quote from the opinion:

"It is contended that the term 'equipment' covers furniture, furnishings, and portable property, and not such articles or improvements as when installed become a part of the school building. It is true that some authorities, in defining 'equipment,' restrict the import of the term to articles of this character. Others, however, give it a broader meaning. Webster, in defining the word 'equip' says: 'To furnish for service, or against a need or exigency; to fit out; to supply with whatever is necessary to efficient action in any way; to provide with arms or an armament, stores, munitions, rigging and the like; - said especially of ships or of troops.' Now if the rigging of a ship is equipment, why not desks, rostrums, ventilating fans and devices, tubular fire escapes, and many other articles used in outfitting a schoolhouse be called equipment?

In fact, it is common knowledge that all of these articles are called equipment, and yet when they are once installed they become parts of the building. They are all 'lienable articles' when being considered in connection with liens of mechanics and materialmen for the construction of buildings. Dictionaries often fall behind the times. Stereotype definitions grow old. While the lexicographers of the past may have enumerated and assembled categories of articles to illustrate a meaning, yet after they having done so, we have no reason to suppose that the categories were exhausted. In determining what is 'equipment' we should have clearly in mind the subject which is being equipped. In this case it was a schoolhouse, and we think a schoolhouse would be in modern times incomplete without many of these things commonly termed 'equipment.' In our opinion the expression, 'the erection, alteration or improvement of such buildings' (school buildings), would fairly include many things which are commonly called 'equipment,' and that the recital in the bond did not necessarily imply that the district was intending to use the proceeds of the sale of the bonds for purposes unauthorized by law. . . ." Midland School District vs. Central Trust Co. 1 Fed. (2d) 124, Circuit Court of Appeals, Eighth Circuit.

We thus come to the question propounded by you:

"What is meant by the phrase, 'purchasing school and gymnasium equipment?'"

We are of the opinion that the meaning of this term includes the purchase of those articles that are usual and necessary in the proper and efficient management of a school of a class and kind as that in question, i. e., maps, globes, furniture and fixtures within the school building proper and basket ball back-boards, basket ball goals, etc. for the gymnasium, shower bath equipment for showers, lockers for the school building and for the dressing rooms of the gymnasium, and such equipment as is necessary on the outside of the building or buildings in question as is right for the proper administration, instruction and the supervision of the recreation of the children thus attending.

Yours very truly

APPROVED OPINION COMMITTEE  
BY T. D. R. CHAIRMAN

ATTORNEY GENERAL OF TEXAS  
s/ Geo. S. Berry

APPROVED AUG. 3, 1939  
s/ GERALD C. MANN  
ATTORNEY GENERAL OF TEXAS

By  
Geo. S. Berry  
Assistant